UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

ABCO STEEL DOOR, LLC

and Case 02-CA-110543

DAVID OZUNA

and Cases 02-CA-110970

02-CA-115413 02-CA-117467

02-CA-118462

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 342

02-CA-121018 02-CA-122927

DECISION AND ORDER

Statement of the Cases

On May 13, 2014, ABCO Steel Door, LLC (the Respondent), United Food and Commercial Workers Union, Local 342 (the Union), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor. On May 13, 2014, Administrative Law Judge Steven B. Fish approved the parties' formal settlement stipulation.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

Findings of Fact

1. The Respondent's business

The Respondent is a limited liability company with an office and principal place of business located at 4191 Third Avenue, Bronx, New York, 10457, where it is engaged in the manufacture of doors and frames for wholesale and retail sale.

Annually, the Respondent, in conducting its business operations described above, derives gross revenue in excess of \$500,000 from sales or performance of services.

Annually, the Respondent, in conducting its business operations described above, purchases products, goods and materials valued in excess of \$5,000 directly from points located outside the State of New York.

The Respondent is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act (the Act).

2. The labor organization involved

The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and warehouse employees and drivers employed by Respondent at 4191 Third Avenue, Bronx, New York, 10457.

On October 15, 2012, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since October 15, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that

The Respondent, ABCO Steel Door, LLC, Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Discharging, refusing to reinstate, suspending, or warning employees, or in any other manner discriminating in regard to hire or tenure of employment or any other term or condition of employment, because they assist the Union and engage in concerted activities, or to discourage employees from engaging in these activities.
- (b) Discharging or refusing to reinstate employees, or in any other manner discriminating in regard to hire or tenure of employment or any other term or condition of employment, because they filed unfair labor practice charges and/or cooperated with the National Labor Relations Board.
- (c) Interfering with employees' right to cooperate in an investigation concerning the termination of another employee by threatening employees with criminal prosecution and other reprisals if their testimony is not favorable to the Respondent's position.
- (d) Interfering with employees' right to have other employees provide evidence in an investigation concerning their termination by threatening employees with criminal prosecution and other reprisals if their testimony is not favorable to the Respondent's position.
- (e) Imposing more onerous working conditions on employees in the Hardware Shop of the Respondent's facility by requiring them to keep the gate in their shop closed, refusing to provide them new fans, more closely monitoring their work, and assigning them more onerous and less agreeable tasks, including but not limited to, sweeping, shoveling, and cleaning bathrooms, because they assist the Union and engage in concerted activities, or to discourage employees from engaging in these activities.
 - (f) Surveilling employees while they are engaged in Union activities.
- (g) Interrogating employees about their Union activities and the Union activities of other employees.
 - (h) Soliciting employees to withdraw their support for the Union.
- (i) Threatening employees with discharge if they do not withdraw their support for the Union.
- (j) Threatening employees with invoking immigration authorities if they do not withdraw their support of the Union.
- (k) Offering employees increased compensation if they withdraw their support for the Union.

- (I) Telling employees it is futile to support the Union as their collective-bargaining representative by telling employees that they will not substantially benefit from Union representation.
- (m) Threatening employees with unspecified reprisals because they selected the Union as their collective-bargaining representative.
- (n) Threatening representatives of the Union with physical violence in the presence of employees.
- (o) Refusing to bargain in good faith with the Union by agreeing to grant Union representatives access to the main office of the Respondent's facility in order to be present when employees presented employment authorization forms, and then denying said access.
- (p) Reassigning or transferring employees because they assist the Union and engage in concerted activities, or to discourage employees from engaging in these activities.
- (q) Instructing employees to stop associating with employees who engage in Union activities.
- (r) Creating the impression that employees' Union activities are under surveillance.
- (s) Threatening employees with discharge for engaging in Union activity and for associating with employees who engage in Union activity.
- (t) Setting unrealistic production quotas for employees because they assist the Union and engage in concerted activities, or to discourage employees from engaging in these activities.
- (u) Reducing employees' pay, including bonus pay, because they assist the Union and engage in concerted activities, or to discourage employees from engaging in these activities.
- (v) Refusing to bargain in good faith with the Union by changing employees' terms and conditions of employment, including but not limited to providing discretionary bonuses, without first notifying the Union and giving it an opportunity to bargain.
- (w) In any manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed to employees by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Within 14 days of the Board's Order, remove from its files any reference to the discharges of David Ozuna, Ruben Santiago, Mauricio Merino, Reynaldo Velasquez, Valentin Nuñez, Genaro Pascual, Edgar Castro, Yoni Severino, Francisco Leotto, and Fausto Manuel Morel, and within 3 days thereafter, notify them in writing that this was done and that the discharges will not be used against them in any way.
- (b) Within 14 days of the Board's Order, remove from its files any reference to the warning issued German Contreras on about December 6, 2013, and the suspensions issued German Contreras on about January 14, March 18, and April 14, 2014, and within 3 days thereafter, notify him, in writing, that this was done and the warning and suspensions will not be used against him in any way.
- (c) Within 14 days of the Board's Order, remove from its files any reference to the suspensions issued Victor Carrasquillo on about December 12, 2013, February 10, March 26, and April 25, 2014, and within 3 days thereafter, notify him, in writing, that this was done and the suspensions will not be used against him in any way.
- (d) Within 14 days of the Board's Order, remove from its files any reference to the suspension issued Jose Rodriguez on about April 23, 2014, and within 3 days thereafter notify him, in writing, that this was done and the suspension will not be used against him in any way.
- (e) Within 14 days of the Board's Order, make whole the following individuals for any loss of pay they may have suffered by reason of the discrimination against them, by payment to them of the amount set forth opposite their names. Separate checks will be issued for backpay (less statutory deductions) and interest (not subject to statutory deductions). Reynaldo Velasquez, Valentin Nuñez, Genaro Pascual, Edgar Castro and Yoni Severino have waived reinstatement to their former positions.

	<u>Princ</u>	<u>ipal (\$)</u>	Interest (\$)	Total (\$)
i.	David Ozuna	32,054	390	32,444
ii.	Ruben Santiago	367	6	373
iii.	Mauricio Merino	320	6	326
iv.	Reynaldo Velasquez	1464	16	1480
٧.	Valentin Nuñez	2705	23	2728
vi.	Genaro Pascual	1965	21	1986
vii.	Edgar Castro	2117	18	2135
viii.	Yoni Severino	2920	24	2944
ix.	Francisco Leotto	5837	24	5861
Χ.	Fausto Manuel Morel	2240	12	2252
xi.	German Contreras	1314	6	1320
xii.	Victor Carrasquillo	921	6	927
xiii.	Jose Rodriguez	214	2	216
xiv.	Jose Moya	156	2	158
XV.	Amilcar Contreras	96	1	97

xvi.	Eliberto Fuentes	96	1	97
xvii.	Edwin Castillo	96	1	97

- (f) By May 27, 2014, offer immediate and full reinstatement to David Ozuna to his former position as a Table Mechanic in the Respondent's Hardware Shop, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- (g) By August 13, 2014, offer immediate and full reinstatement to Fausto Manuel Morel to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- (h) By August 13, 2014, offer immediate and full reinstatement to Francisco Leotto to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- (i) Within 14 days of the reinstatement of Fausto Manuel Morel and Francisco Leotto, make them whole for any loss of earnings they may have suffered from May 13, 2014 through the date of their reinstatement, by payment to them of 80% of the wages they would have earned had they been reinstated by the Respondent on May 13, 2014.
- (j) By June 3, 2014, offer immediate and full reinstatement to Victor Carrasquillo to his former job in the Hardware Shop or, if that job no longer exists, to a substantially equivalent position in the Hardware Shop, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- (k) By June 3, 2014, offer immediate and full reinstatement to Jose Rodriguez to his former job in the Hardware Shop or, if that job no longer exists, to a substantially equivalent position in the Hardware Shop, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- (I) Within 14 days of the Board's Order, provide employees in the Hardware Shop fans and ventilation that is comparable to the fans and ventilation provided other shops in the Respondent's facility in the summer of 2013.
- (m) Within 14 days of service by the Region, post at its facility copies of the attached Notice to Employees (Notice). Copies of the Notice, in English and in Spanish, on forms provided by Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places. The Respondent will take reasonable steps to ensure that the Notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facility, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all employees employed by the Respondent at any time during the period July 1, 2013 to the present.

- (n) Within 14 days after service by the Region of the Notice, hold a meeting or meetings at the Respondent's facility, scheduled to ensure the widest possible audience of employees, at which David or Israel Schwartz, in the presence of a Board agent, shall read the attached Notice to Employees, and an interpreter, paid for by the Respondent, shall translate that speech into Spanish.
- (o) Within 21 days after service by the Region of the Notice, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., June 3, 2014.

NATIONAL LABOR RELATIONS BOARD		
Nancy Schiffer,	Member	
Harry I. Johnson, III	Member	
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	<u> </u>	
Mark Gaston Pearce,	Chairman	

7

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join or assist a union; Choose representatives to bargain with us on your behalf; Act together with other employees for your benefit and protection;

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT warn, suspend, reassign, or transfer you because of your membership in the United Food and Commercial Workers Union, Local 342 (the Union) or support for the Union.

WE WILL NOT fire you because of your Union membership or support.

WE WILL NOT fire you because you file unfair labor practice charges or cooperate with the National Labor Relations Board.

WE WILL NOT decrease your pay or decrease the amount of any monetary bonus because of your Union membership or support.

WE WILL NOT close the gates in your shop or require you to keep the gates closed in your shop; refuse to provide you new fans; more closely monitor your work; or assign you more onerous and less agreeable tasks, including but not limited to sweeping, shoveling and cleaning bathrooms, because of your Union membership or support.

WE WILL NOT interfere with your right to cooperate in an investigation concerning the termination of another employee by threatening you with criminal prosecution and other reprisals if you do not testify favorably to our position.

WE WILL NOT interfere with your right to have other employees provide evidence in an investigation concerning another employee's discharge by threatening employees with criminal prosecution and other reprisals if you do not testify favorably to our position.

WE WILL NOT ask you about employee support for the Union.

WE WILL NOT watch you in order to find out about your Union activities.

WE WILL NOT ask any employee to sign a document that states you no longer wish to be represented by the Union.

WE WILL NOT threaten you with discharge, threaten to require you to provide immigration papers, or threaten you with any other unspecified reprisals if you choose not to sign something to get rid of the Union.

WE WILL NOT promise you wage increases to encourage you to sign something to get rid of the Union.

WE WILL NOT tell you that the Union cannot help you as your collective-bargaining representative.

WE WILL NOT threaten you with unspecified reprisals because you selected the Union as your collective-bargaining representative.

WE WILL NOT threaten Union representatives with physical violence in the presence of employees.

WE WILL NOT set an unrealistic production quota because of your Union membership or support.

WE WILL NOT threaten to fire you for engaging in Union activity and for associating with employees who support the Union.

WE WILL NOT instruct you to stop associating, gathering, or speaking with employees who support the Union.

WE WILL NOT refuse to bargain in good faith with the Union by agreeing to grant Union representatives access to our facility in order to be present when employees present employment authorization forms, and then deny the Union access.

WE WILL NOT make changes in wages, hours and working conditions without negotiating with the Union and reaching an agreement or overall good faith impasse.

WE WILL NOT in any manner interfere with your rights under Section 7 of the Act.

WE WILL pay David Ozuna, Ruben Santiago, Mauricio Merino, Edgar Castro, Genaro Pascual, Valentin Nuñez, Yoni Severino, Reynaldo Velasquez, Francisco Leotto and Fausto Manuel Morel the wages and other benefits they lost because we fired them.

WE WILL pay German Contreras, Jose Rodriguez, Victor Carrasquillo, Amilcar Contreras, Jose Moya, Edwin Castillo, Ruben Santiago, and Eliberto Fuentes the wages and other benefits they lost because we paid them a lower monetary bonus.

WE WILL pay Victor Carrasquillo, Jose Rodriguez, and German Contreras the wages and other benefits they lost because we suspended them.

WE WILL pay Victor Carrasquillo for the half hour in wages that he lost because we withheld those wages.

WE WILL return Jose Rodriguez and Victor Carrasquillo to their prior positions in the Hardware Shop without prejudice to their seniority or any other rights and/or privileges previously enjoyed.

WE WILL offer David Ozuna immediate and full reinstatement to his position as a Table Mechanic in the Hardware Shop without prejudice to his seniority and any other rights and/or privileges previously enjoyed.

WE WILL offer Francisco Leotto and Fausto Manuel Morel full reinstatement to their former jobs without prejudice to their seniority or any other rights and/or privileges previously enjoyed. Edgar Castro, Genaro Pascual, Valentin Nuñez, Yoni Severino, and Reynaldo Velasquez have waived their right to reinstatement.

WE WILL remove from our files all references to the discharges of David Ozuna, Ruben Santiago, Mauricio Merino, Edgar Castro, Genaro Pascual, Valentin Nuñez, Yoni Severino, Reynaldo Velasquez, Francisco Leotto, and Fausto Manuel Morel, and **WE WILL** notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL remove from our files all references to the suspensions, warnings, transfers, and reassignments of German Contreras, Victor Carrasquillo, Francisco Leotto, and Jose Rodriguez, and **WE WILL** notify them in writing that this has been done and that the discipline will not be used against them in any way.

WE WILL provide employees in the Hardware Shop fans and ventilation that is comparable to the fans and ventilation provided to other shops in our facility in the summer of 2013.

ABCO STEEL DOOR, LLC (Employer)